

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 UNITED STATES OF AMERICA,) Case No. 09CR1209-H
5)
6 Plaintiff,) San Diego, California
7 vs.)
8) Wednesday,
9) April 8, 2009
10) 10:00 a.m.
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10 TRANSCRIPT OF ARRAIGNMENT
11 BEFORE THE HONORABLE NITA L. STORMES
12 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff: TODD ROBINSON, ESQ.
14 NICOLE JONES
15 Assistant United States
16 Attorney
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17 For the Defendant: FEDERAL DEFENDERS OF SAN DIEGO
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1 SAN DIEGO, CALIFORNIA WEDNESDAY, APRIL 8, 2009 10:00 A.M.

2 --oOo--

3 (Call to order of the Court.)

4 THE CLERK: Calling matter number one off the log,
5 Case Number 09CR1209-H, United States versus Michael Ivy,
6 Stanley Gentry, Billie Bishop, Diana Jaime, Jorge Cortez,
7 Lorena Callu, Anton Ewing, Dennis Tapia, Desiree Holiday,
8 Dexter Holiday, Keith Holiday, Ray Logan, David Lewis,
9 Joseph Lewis, Gerard Holiday, Stevie Frazier, Jorge Magana,
10 Nicoele Watson, and Daniel Williams, all on the log for
11 arraignment on the indictment.

12 MR. BURSTEIN: And good morning, your Honor.
13 Devon Burstein for Federal Defenders, on behalf of all log
14 matters today --

15 THE COURT: Good morning.

16 MR. BURSTEIN: -- or this morning at least.

17 MR. ROBINSON: Good morning, your Honor. Todd
18 Robinson and Nicole Jones on behalf of the United States.

19 THE COURT: Good morning.

20 We have a few more individuals to bring up.

21 MR. ROBINSON: What I was going to ask is for a
22 moment. As I'm sure you can imagine, it has been crazy
23 downstairs.

24 MR. BURSTEIN: Your Honor, may I approach with a
25 conflict list?

1 THE COURT: Yes, please.

2 (Pause.)

3 THE CLERK: We have a Michael Ivy, Stanley Gentry,
4 Billie Bishop, Diane Jaime, Jorge Cortez, Lorena Callu,
5 Anton Ewing, Dennis Tapia, Desiree Holiday, Dexter Holiday.

6 DEFENDANT DEXTER HOLIDAY: Here.

7 THE CLERK: Keith Holiday?

8 DEFENDANT KEITH HOLIDAY: Here.

9 THE CLERK: Ray Logan?

10 DEFENDANT LOGAN: Here.

11 THE CLERK: David Lewis?

12 DEFENDANT D. LEWIS: Here.

13 THE CLERK: Joseph Lewis?

14 DEFENDANT J. LEWIS: Yeah, right here.

15 THE CLERK: Gerard Holiday, Stevie Frazier, Jorge
16 Magana, Nicoele Watson, and Daniel Williams?

17 DEFENDANT WILLIAMS: Here.

18 THE COURT: All right. Good morning, ladies and
19 gentlemen. Each of you is here today because you've been
20 charged by way of a federal indictment with conspiracy to
21 conduct enterprise affairs through a pattern of racketeering
22 activity and criminal forfeiture.

23 You're not required to make any statement about
24 these charges today, and I should caution you if you were to
25 make a statement, it might later be used against you.

1 You have the right to be represented by an
2 attorney throughout the proceedings. If you cannot afford
3 to hire an attorney, the Court will appoint one for you at
4 no cost to you.

5 Unless the Government proves that you are either
6 dangerous or likely to flee and not show up for court, you
7 also have the right to have this Court set reasonable
8 conditions for your release from jail.

9 All right. Mr. Perrault, would you please arraign
10 each of these individuals on the indictment.

11 THE CLERK: Yes, your Honor. Will you please
12 raise your right hand. Do you each solemnly swear the
13 evidence you shall give in the cause before the Court shall
14 be the truth, the whole truth, and nothing but the truth, so
15 help you God?

16 DEFENDANTS: Yes.

17 THE CLERK: Okay. You may put your hands down.
18 Michael Ivy, is that your true name?

19 DEFENDANT IVY: Yes.

20 THE CLERK: Stanley Gentry, is that your true
21 name?

22 DEFENDANT GENTRY: Yes.

23 THE CLERK: Billie Bishop, is that your true name?

24 DEFENDANT BISHOP: Yes.

25 THE CLERK: Diana Jaime, is that your true name?

1 DEFENDANT JAIME: Yes.

2 THE CLERK: Jorge Cortez, is that your true name?

3 DEFENDANT CORTEZ: Yes.

4 THE CLERK: Lorena Callu, is that your true name?

5 DEFENDANT CALLU: Yes.

6 THE CLERK: Anton Ewing, is that your true name?

7 DEFENDANT EWING: Yes.

8 THE CLERK: Dennis Tapia, is that your true name?

9 DEFENDANT TAPIA: Yes.

10 THE CLERK: Desiree Holiday, is that your true
11 name?

12 DEFENDANT DESIREE HOLIDAY: Yes.

13 THE CLERK: Dexter Holiday, is that your true
14 name?

15 DEFENDANT DEXTER HOLIDAY: Yes.

16 THE CLERK: Keith Holiday, is that your true name?

17 DEFENDANT KEITH HOLIDAY: Yes.

18 THE CLERK: Ray Logan, is that your true name?

19 DEFENDANT LOGAN: It's Ray Anthony Logan.

20 THE CLERK: Ray Anthony. David Lewis, is that
21 your true name?

22 DEFENDANT LEWIS: Yes.

23 THE CLERK: Gerard Holiday, is that your true
24 name?

25 DEFENDANT HOLIDAY: Yes.

1 THE CLERK: Stevie Frazier, is that your true
2 name?

3 DEFENDANT FRAZIER: Yes.

4 THE CLERK: Jorge Magana, is that your true name?

5 DEFENDANT MAGANA: Yes.

6 THE CLERK: Nicoele Watson, is that your true
7 name?

8 DEFENDANT WATSON: Yes.

9 THE CLERK: And, Daniel Williams, is that your
10 true name?

11 DEFENDANT WILLIAMS: Yes.

12 THE CLERK: You're each hereby informed that an
13 indictment has been filed charging you each with conspiracy
14 to conduct enterprise affairs through a pattern of
15 racketeering activities and criminal forfeiture.

16 Counsel, have you received a copy of this
17 indictment, and do you waive further reading?

18 MR. BURSTEIN: I have and so waive.

19 THE CLERK: You are each further informed that you
20 have the right to be represented by counsel at all
21 proceedings before the Court. You have the right to remain
22 silent, the right to a trial by jury. You have the right to
23 confront and cross examine any witnesses who testify against
24 you, and you each have the right to have witnesses
25 subpoenaed to testify on your behalf.

1 Now, how do you each plead to the counts in the
2 indictment in which you are named, starting with --

3 MR. BURSTEIN: Please enter a not guilty plea on
4 behalf of all Defendants.

5 THE COURT: The Court will enter a not guilty plea
6 to the indictment all counts on behalf of each of these
7 individuals.

8 Now, with regard to Mr. Michael Ivy, is he
9 requesting appointment of counsel?

10 MR. BURSTEIN: He is, your Honor. And at this
11 point we'd ask you for a provisional counsel for all.

12 THE COURT: This is what the Court intends to do.

13 MR. BURSTEIN: Okay.

14 THE COURT: I will provisionally appoint counsel
15 for each of these individuals. I will require that a
16 financial affidavit be filed under seal in light of the
17 allegations in this case within -- let's see, by next
18 Tuesday, April 14.

19 MR. BURSTEIN: And, your Honor, you know, my
20 understanding is that is this all going to be all CJA
21 appointments?

22 THE COURT: Well, Federal Defenders is not on the
23 conflicts list. So they can represent at least one of the
24 Defendants in the case.

25 MR. BURSTEIN: Okay. Because I was just going to

1 just -- for the purposes of letting everybody know about the
2 financial affidavit, the specific requirement in this case,
3 perhaps a minute order in the -- in the docket sheet would
4 be helpful.

5 THE COURT: A minute order as to what?

6 MR. BURSTEIN: When the conditions are set
7 specifying --

8 THE COURT: Well, the minute order will specify
9 when the financial affidavit has to be submitted to the
10 Court. I will ask Pretrial Services to monitor compliance
11 with that request.

12 MR. BURSTEIN: And I was just going to say under
13 seal because most people are --

14 THE COURT: Yes, it will be in the minute order.

15 MR. BURSTEIN: Thank you, your Honor. That's all.

16 THE COURT: The Court will provisionally appoint
17 Attorney Bernard Skomal for Michael Ivy, Attorney Paul Blake
18 for Stanley Gentry, Attorney Steven White for Billie Bishop,
19 Federal Defenders for Diana Jaime, Holly Sullivan for Jorge
20 Cortez, Lisa Baughman for Lorena Callu, Gregory Obenauer for
21 Anton Ewing --

22 MR. BURSTEIN: Your Honor, one private counsel is
23 present who's already been retained for Mr. --

24 MR. MOORE: Your Honor, Todd Moore. I'm counsel
25 for Mr. Jorge Cortez. I have not had a chance to speak with

1 him since he's been arrested. I --

2 THE COURT: Would you come forward, please, to the
3 podium. Your name, sir?

4 MR. MOORE: Todd Moore.

5 THE COURT: And you are making an appearance on
6 behalf of Jorge Cortez?

7 MR. MOORE: Yes, I'll make a limited appearance.
8 I'd like to speak with him first. I have not had a chance
9 to do that. So he's been arraigned. I understand counsel's
10 been provisionally appointed. I can speak with him after
11 this, and then I can address it at the next hearing.

12 THE COURT: Well, you can go talk to him whenever
13 you wish. You're not making an appearance at this time
14 unless you're making an appearance both for this appearance
15 and for the next appearance.

16 MR. MOORE: I understand. I came forward at the
17 request of Federal Defenders. I was trying to see him, and
18 I had been unable to see him. That's all I'm saying.

19 THE COURT: All right.

20 MR. MOORE: So it's still Holly Sullivan then,
21 your Honor?

22 THE COURT: That's correct.

23 MR. MOORE: Thank you. Sorry.

24 THE COURT: You're welcome.

25 Where was I, George?

1 THE CLERK: You were on number 13, Mr. Tapia I
2 believe.

3 THE COURT: Mr. Tapia, okay. Attorney Antonio
4 Yoon for Dennis Tapia. Attorney Lynn Ball for Desiree
5 Holiday. Attorney Mayra Garcia for Dexter Holiday. David
6 Bartick for Keith Holiday. Lisa Damiani for Ray Anthony
7 Logan. Debra DiJorio for David Lewis. Robert Schlien for
8 Joseph Lewis. William Burgener for Gerard Holiday. Michael
9 Burke for Stevie Frazier. Joan Bader for Jorge Magana.

10 MR. BURSTEIN: That was Joan Bader?

11 THE COURT: Correct. Keith McMullan -- or, sorry
12 -- Kenneth McMullan for Nicoele Watson, and Thomas Sims for
13 Daniel Williams.

14 MR. BURSTEIN: Your Honor, how would you like to
15 address providing cards to the Defendants? Do you want to
16 take the time and do that now?

17 THE COURT: I think what we'll do is I'm going to
18 ask Mr. Robinson to give a proffer as to the general
19 background of this indictment and then make a bail
20 recommendation with regard to each of these individuals.

21 MR. ROBINSON: Yes, your Honor.

22 THE COURT: As far as getting cards to them, I'll
23 make sure they get cards for their attorneys before they're
24 taken back. And maybe you can give those out.

25 MR. BURSTEIN: Are you going to want to hear from

1 me on bail or no?

2 THE COURT: Of course.

3 MR. BURSTEIN: Okay. That's fine.

4 THE COURT: This isn't a running dialogue. All
5 right.

6 Mr. Robinson?

7 MR. ROBINSON: Your Honor, did the Court want to
8 proceed first with the request for detention? There will be
9 a number of those.

10 THE COURT: All right. Are there any requests for
11 detention?

12 MR. ROBINSON: Yes, there are, your Honor. The
13 United States would move for detention against Defendant
14 Desiree Holiday, number 14, based upon risk of flight.

15 THE COURT: All right.

16 MR. ROBINSON: Defendant Dexter Holiday, Defendant
17 number 15, on both risk of flight and danger to the
18 community, Defendant Keith Holiday, number 16 on the
19 indictment as to both danger to the community and risk of
20 flight, Ray Logan, Defendant number 17, on both grounds,
21 your Honor, David Lewis, Defendant number 18, on both
22 grounds -- I'm sorry -- yes. Joseph Lewis, Defendant number
23 19, on both grounds, Gerard Holiday, Defendant number 20, on
24 both grounds, and Stevie Frazier, Defendant number 21, on
25 both grounds, and we would request that the Court set that

1 three days in the future.

2 THE COURT: Okay. I assume that the defense may
3 want five days, counsel?

4 MR. BURSTEIN: That would be excellent, your
5 Honor.

6 THE COURT: All right.

7 MR. BURSTEIN: And, again, if I can just -- if we
8 can go through that list so that I can mark it on the
9 sheets.

10 (Pause.)

11 THE COURT: All right. Counsel, my courtroom
12 deputy is going to help you pull the cards.

13 MR. BURSTEIN: Thank you, your Honor.

14 THE COURT: As far as the detention hearing is
15 concerned, I'm going to set the detention hearing for each
16 of the Defendants that Mr. Robinson identified for Wednesday
17 morning, April 15, at 9:00 o'clock in the morning, and the
18 individuals will be Desiree Holiday, Dexter Holiday, Keith
19 Holiday, Ray Anthony Logan, David Lewis, Joseph Lewis,
20 Gerard Holiday, and Stevie Frazier.

21 Did I miss anyone?

22 MR. ROBINSON: No. That is correct, your Honor.

23 THE COURT: All right. And all of those will be
24 based on risk of flight and danger to the community I
25 believe as to all except Desiree Holiday?

1 MR. ROBINSON: That is correct, your Honor.

2 THE COURT: All right. Those will be set
3 Wednesday, April 15, 9:00 o'clock in the morning.

4 MR. ROBINSON: Thank you, your Honor.

5 THE COURT: All right. Now, with regard to those
6 individuals for whom the Government has not moved for
7 detention, beginning first with Mr. Ivy.

8 MR. ROBINSON: Yes, your Honor. If it's
9 acceptable to the Court, what I'd like to do is make a
10 generalized proffer as to the nature and circumstances of
11 this case and then a particularized recommendation as to
12 each of the Defendants we're not seeking detention against.

13 THE COURT: That would be helpful. Thank you, Mr.
14 Robinson.

15 MR. ROBINSON: Your Honor, as alleged in the
16 indictment, the 24 Defendants participated in a racketeering
17 enterprise, and basically the scheme was to defraud lending
18 institutions by purchasing fraudulently various properties
19 throughout San Diego County. There were approximately 220
20 different properties, and those properties, the value of
21 those properties, the loans that were obtained fraudulently
22 exceeded \$100,000,000.

23 As alleged in the indictment, the scheme depended
24 upon an entity or false business called Bell Construction,
25 and that was maintained by lead Defendant Darnell Bell. The

1 indictment alleges that \$9,000,000 -- in excess of
2 \$9,000,000 was funneled into the Bell Construction account.
3 The forfeiture allegation in the indictment has amount of
4 \$11,000,000, and the \$9,000,000 is subsumed within that
5 \$11,000,000 amount, and that's relevant for purposes of how
6 the guideline calculations would proceed according to this
7 case.

8 For a racketeering offense, the base offense level
9 is 19. However, it cross-references the fraud guidelines
10 because those guidelines would be in excess of 19. At a
11 loss amount of \$9,000,000 -- and that's a very conservative
12 loss calculation, and I'll go into that in just a second --
13 with the adjustments for over 50 victims in this case, it
14 would result in a base offense level of 31. The low end of
15 31, assuming that any given Defendant has no criminal
16 history, would be 108 months in custody, with a high end of
17 135 months.

18 So that's generally speaking the parameters of
19 what the Defendants are facing given the nature and
20 circumstances of the charge in this case.

21 With respect to each Defendant's role in the
22 offense, it varied according to Defendant, and I'd like to
23 address the specific role when I make the recommendation for
24 a specific amount of bond.

25 The defrauded institutions, as I mentioned

1 earlier, there were in excess of 70 different institutions
2 that lost money as part of this scheme, and if I could
3 address for a second the way in which the loss calculation
4 -- the \$9,000,000 is just the money that was funneled into
5 the Bell Construction account. And the scheme proceeded as
6 follows.

7 Basically, the enterprise would identify a piece
8 of property that had been on the market for, say, six
9 months. And I'm not speaking to any particular piece of
10 property, just in general terms. In this hypothetical, the
11 property would be reduced in its original asking price from,
12 say, \$600,000 to \$500,000. The enterprise would then go in
13 and make a full price offer to the seller, that is \$500,000.
14 The enterprise, the straw purchaser employed by the
15 enterprise would then enter into a side agreement with the
16 seller, and they would obtain a false appraisal for that
17 property at \$600,000. The straw purchaser would obtain a
18 loan from a financial institution or other lending
19 institution in the amount of \$600,000, the appraised value
20 of the property.

21 So at the close of escrow, the \$500,000 would go
22 to the seller, and the additional \$100,000 would go to Bell
23 Construction, ostensibly for handicap upgrades to the
24 property. As alleged in the indictment, that, of course,
25 was never done with respect to any of the properties, and

1 lead Defendant Darnell Bell would then take the \$100,000,
2 pay the straw purchaser for their participation in the
3 scheme, pay the appraiser for the false appraisal that was
4 done, and there were also individuals who submitted false
5 verifications of employment, also known as CPA letters, to
6 the lending institutions to backstop the false information
7 in the loan applications by the straw purchasers.

8 So in terms of the racketeering activity, the
9 pattern of racketeering activity alleged in the indictment
10 is wire fraud, bank fraud, and money laundering, the 1957
11 money laundering, that is, \$10,000 in direct proceeds from
12 the illegal activity being funneled into various bank
13 accounts, and the indictment has a host of overt acts which
14 allege the various events which constitute the pattern of
15 racketeering activity.

16 So that would be the overall scheme that was
17 employed, and essentially that scheme was repeated
18 approximately 220 times over the course of the enterprise's
19 existence and the conspiracy charged in the indictment.

20 So the straw purchasers who were employed by the
21 enterprise obtained loans in excess of \$100,000,000 from
22 various banks, and they defaulted on all of those mortgages.
23 All of the 220 properties went into foreclosure, which
24 brings me to the loss calculation.

25 When I proffered to the Court that the loss is

1 \$9,000,000, that's not the true extent of the loss, because
2 that's just the money that was skimmed off the top at the
3 time of escrow, the kickback scheme to the enterprise.

4 What the loss is really calculated as is the
5 selling price after foreclosure. So in my hypothetical that
6 I gave the Court, the bank had a \$600,000 loan which was
7 only secured by a \$500,000 piece of property. When that
8 piece of property went into foreclosure, there are costs
9 associated with that foreclosure, and ultimately given the
10 decline in the market, that property sold for approximately
11 250, 300 thousand dollars.

12 So the loss amount in this case far exceeded the
13 \$100,000 kickback. The loss is actually properly reflected
14 in the ultimate selling price after foreclosure of that
15 piece of property. So when I estimate for the Court the
16 base offense level calculation at a level 31, that's
17 actually a very conservative estimate with respect to the
18 loss in this case.

19 So turning the Court's attention to the respective
20 roles of the Defendants, starting with Mr. Michael Ivy,
21 Defendant number two in the indictment, the Government is
22 recommending a property bond secured by \$1,000,000 in real
23 property, and the first four Defendants on the indictment
24 were the critical participants in the enterprise.

25 What Defendant Ivy did was primarily he negotiated

1 for the sale of all the pieces of property. The straw
2 purchasers would be recruited. Defendant Ivy would then
3 send an offer to the seller, and that offer would include
4 the kickback amount to Bell Construction.

5 So Mr. Ivy, Defendant number two, was well aware
6 of the extent of the fraud. He was well aware of the
7 amounts that were being funneled back to the Bell
8 Construction account, and he personally benefitted
9 significantly in financial terms from his participation, and
10 we've directly traced in excess of \$200,000 being deposited
11 into his account during the course of the enterprise's
12 existence.

13 And when I reference the monetary amounts, this is
14 only what we have at this particular time that we could
15 prove beyond a reasonable doubt. Obviously, with the extent
16 of this fraud, there were additional bank accounts. There
17 were additional monetary transactions, and much of it was
18 done on a cash basis. The monetary amounts that I'm going
19 to reference during this entire proffer are either wire
20 transfers, checks, or other deposits that we were able to
21 verify. So the hand-to-hand money transactions are not
22 included within the Government's proffer with respect to the
23 financial aspect of this case.

24 Defendant Ivy also has property interests outside
25 of the Southern District of California, and with respect to

1 all of the Defendants in this case, the Government's -- I'm
2 sorry, with two exceptions, the Government's recommendation
3 is going to be that the bond amounts are secured by real
4 property.

5 And this case poses a very unique set of
6 circumstances because the Defendants, as I noted, are facing
7 a tremendous amount of time in custody. For those that have
8 done time before, we are seeking detention by and large
9 against the Defendants who have lengthy criminal history.
10 So those aren't part of this proffer. But for the other
11 Defendants, there's a strong incentive for them to flee and
12 not face the charges in this case because of the extent of
13 the fraud that was involved and the resulting exposure that
14 they have under the sentencing guidelines, and signatures in
15 and of themselves, given the fact that many of the
16 Defendants in their participation in this conspiracy sign
17 false documents, signed things that were absolutely untrue,
18 and the nature of the fraud itself calls into question any
19 signature bond that could be posted in this particular case,
20 I think it's necessary given their participation and given
21 their demonstrated willingness to falsify documents and not
22 be true to their word that it be secured by real property if
23 the Court sets bond in this matter.

24 THE COURT: Well, Mr. Robinson, how am I to avoid
25 mini trials on documents submitted in support of property

1 bonds in this case?

2 MR. ROBINSON: It is a problematic aspect, and we
3 would be requesting a Nebia Hearing with respect to a number
4 of the properties, and we've done our homework, quite
5 frankly. And if they try to post properties that we've
6 identified as part of this scheme that were fraudulently
7 obtained, we will, of course, bring that to the Court's
8 attention.

9 So it is somewhat ironic, I concede to the Court,
10 that given the nature of this case, the property bond that's
11 being used to secure their release from custody, but
12 really --

13 THE COURT: What about the alternative of a cash
14 or corporate surety bond?

15 MR. ROBINSON: I don't think that that will have
16 the necessary coercive effect on the Defendants.
17 Particularly what the Government is looking for here is for
18 their family members to post their -- their primary
19 residences to secure these bonds. And I think if and only
20 when that is done that that is going to serve to ensure this
21 Court that they make their future court appearances, because
22 I think that if they post their own primary residences, many
23 of the Defendants' primary residences are in foreclosure or
24 they're in rental properties so that they can't post their
25 own primary residences, but we have extensive information

1 about their family members, and that is who we're seeking to
2 have on the bond in this case, so that they run the very
3 real risk of their family members becoming -- or their
4 family members being adversely affected if they choose to
5 either violate the conditions of release or not make their
6 future court appearances.

7 THE COURT: All right.

8 MR. ROBINSON: And, again, your Honor, as is
9 always the case, setting an amount is a somewhat arbitrary
10 process, and we pegged that amount to not only their
11 involvement in this case and the fraud that was perpetrated
12 by each particular Defendant but also their role in the
13 offense and the amount of money that they made pursuant to
14 their participation in the offense.

15 So if -- for example, Mr. Michael Ivy, if the
16 Court were inclined to follow the Government's
17 recommendation and have \$1,000,000 secured by real property,
18 if he had two family members that could post 795, that's, of
19 course, something that I think would reasonably secure his
20 appearance at future court proceedings. So it's not the
21 monetary amount. It's really what is going to make these
22 Defendants come to their court appearances and abide by the
23 conditions of release.

24 THE COURT: All right. Let me ask defense counsel
25 for a proffer with regard to Mr. Ivy at this point.

1 MR. BURSTEIN: Yes, your Honor. I think Mr.
2 Robinson said two important things. One, he said what's
3 important to him is not the amount. And, two, he said that
4 what's important is that family members are on the hook.
5 Now, a signature bond by a related family member, I can't
6 imagine wouldn't have the exact effect that Mr. Robinson is
7 looking for and would avoid the problems your Honor brought
8 forth with regard to Nebia Hearings, mini trials on
9 properties.

10 So if the point is to have the families on the
11 hook, then I suggest signature bonds with the requirement
12 that at least one family member is a signatory.

13 And then as to the other point that Mr. Robinson
14 made, that it's not really the amount, it's having the
15 family on the hook, well, I think that that would go,
16 specifically in Mr. Ivy's case, to the point that what's
17 important is to make sure he comes. So if his family were
18 on the hook for something like \$100,000, I think that that
19 would address both of Mr. Robinson's concerns, would avoid
20 any undue delay and more of a burden on your Honor to be
21 perfectly honest.

22 So I would suggest for Mr. Ivy, for example, a
23 \$100,000 personal appearance bond secured by two signatures
24 of financially responsible adults, one of whom being
25 related.

1 MR. ROBINSON: Your Honor, it would respectfully
2 be the Government's position that a \$100,000 signature bond
3 is inappropriate given the fact that we directly traced over
4 twice that amount going into his account pursuant to his
5 participation in this scheme.

6 MR. BURSTEIN: Your Honor, it wouldn't be him
7 that's on the hook. So --

8 THE COURT: All right. All right. All right.
9 The Court is going to require a \$250,000 personal appearance
10 bond secured by a trust deed to the United States and the
11 co-signatures of the Defendant and the property owners, one
12 of whom shall be a family member.

13 There will be a travel restriction to the Southern
14 District of California. Defendant shall report for
15 supervision to Pretrial Services, and he shall actively
16 maintain or seek full time employment.

17 Do I have a date for the motion hearing and trial
18 setting?

19 THE CLERK: It's May 18th at 2:00 p.m.

20 THE COURT: May 18 at 2:00 p.m. will be the next
21 court appearance for Mr. Ivy.

22 Now, moving on to --

23 MR. BURSTEIN: Your Honor, is that before Judge
24 Huff?

25 THE COURT: Yes.

1 Now, moving on to Mr. Gentry, Mr. Robinson?

2 MR. ROBINSON: Yes, your Honor. Mr. Gentry was
3 the realtor who allowed the enterprise to use his real
4 estate license in order to affect the entire fraud in this
5 case. As opposed to Mr. Ivy, we can directly trace over
6 \$1,000,000 going into his account that he benefitted from
7 his participation in the scheme. Essentially he was paid
8 \$10,000 a month flat fee by the enterprise to use his real
9 estate license, and he also made the various real estate
10 commissions off of the sale of the 220 pieces of property.
11 So the amount of money that he realized directly and
12 personally from this enterprise was significant. And,
13 again, it was at least five times as much as Defendant
14 Michael Ivy, and our recommendation for Mr. Gentry is also a
15 bond secured by real property in the amount of \$1,000,000,
16 which is what we can trace into his account from his
17 participation in this case.

18 THE COURT: All right. Thank you.

19 MR. BURSTEIN: Your Honor, I think it's
20 interesting to note that Pretrial Service's recommendation
21 as to Mr. Gentry's approximately \$200,000, less than their
22 recommendation was for Mr. Ivy, and I can only assume that's
23 because they've concluded that his connections to the local
24 area and to San Diego are greater and so, therefore, he
25 poses a less -- less of a risk of flight and he is more

1 likely to make his court appearances.

2 We would concur that that is likely to be the case
3 given his contacts to the local area and his -- the fact
4 that he resides in this District. And, therefore, we would
5 request also a \$100,000 personal appearance bond secured by
6 the signatures of two financially responsible adults, one of
7 whom being related.

8 MR. ROBINSON: It is correct that he has
9 significant ties to this community, your Honor. He has
10 maintained a business here for quite some time in addition
11 to his real estate business. So I do concede the fact that
12 Mr. Gentry has significant contacts to this District.

13 THE COURT: All right. Thank you.

14 I neglected to indicate as to Mr. Ivy that the
15 Court will require a surety exam prior to release.

16 Court's going to require a \$250,000 personal
17 appearance bond secured by a trust deed to the United States
18 and the signatures of the Defendant and the property owners,
19 one of whom shall be a family member.

20 There will be a travel restriction to the Southern
21 District of California, and Mr. Gentry shall submit to
22 pretrial supervision, and I will require an examination of
23 sureties prior to release.

24 All right. Billie Bishop.

25 MR. ROBINSON: Yes, your Honor. Ms. Bishop,

1 Defendant number four in the indictment, is the fourth of
2 our principal four players in this. The role that Ms.
3 Bishop played within the enterprise was that she maintained
4 an escrow service, and through that escrow service, she
5 closed on in excess of 100 of the 220 properties that we've
6 been able to confirm at this point. She was perfectly aware
7 of the entire scope of the scheme because she was the
8 individual responsible for hiding from the lending
9 institution the kickback amount going to Bell Construction
10 in terms of not disclosing to the lending institutions the
11 fact that there was this side agreement between the buyer,
12 the straw buyer acting on behalf of the enterprise, and the
13 seller. So she conducted in excess of 100 closings where
14 there was the kickback amount going to Bell Construction,
15 and she made a significant amount of money given her role in
16 the processing of all that paperwork.

17 As a result of that, your Honor, we are also
18 recommending a property bond in the amount of \$200,000 for
19 Ms. Bishop. I would also note for the record that her
20 employment is tenuous at this point because she was working
21 for a business called Tide Court Title. When they were
22 served with a subpoena in this case and they reviewed the
23 files before turning them over to the United States
24 Government pursuant to that subpoena, she was summarily
25 dismissed from that company because of their independent

1 review of those files.

2 THE COURT: Thank you.

3 Counsel?

4 MR. BURSTEIN: Yes, your Honor. Pretrial
5 Services, I think accurately, has concluded that Ms. Bishop
6 is a minimal risk of non-appearance, and she's not a danger
7 based on her familial ties here and her financial ties to
8 the community. She's got no prior criminal history.
9 Pretrial Services has recommended a \$100,000 property bond,
10 but I don't see any reason why in this case a \$50,000
11 personal appearance bond secured by two signatures wouldn't
12 be more than sufficient to assure all future court
13 appearances.

14 THE COURT: Anything further, Mr. Robinson?

15 MR. ROBINSON: No, your Honor. And, again, this
16 is not a situation where I'm shooting high and hoping the
17 Court comes in in the middle. I'm making the recommendation
18 that I think is appropriate.

19 THE COURT: The Court's going to require a
20 \$150,000 personal appearance bond secured by a trust deed to
21 the United States and the signatures of the property owners,
22 one of whom shall be a family member. It will also require
23 an examination of sureties prior to release. There will be
24 a travel restriction to the Southern District of California.
25 Defendant shall report for supervision to Pretrial Services

1 and actively seek full time employment, which shall be
2 approved by her Pretrial Services officer.

3 Those will be the conditions as to Ms. Bishop.

4 All right. Moving on to Ms. Jaime.

5 MR. ROBINSON: Your Honor, Ms. Jaime has a unique
6 set of circumstances. Could we address her at the end,
7 along with Daniel Williams, who is also uniquely situated in
8 this case?

9 THE COURT: Yes.

10 MR. BURSTEIN: Your Honor, if I could just ask is
11 there a report for Ms. Jaime?

12 THE COURT: Excuse me?

13 MR. BURSTEIN: Is there a Pretrial Services
14 report? Do you know? I don't have one.

15 THE COURT: I have one. Do you need another one?

16 MR. BURSTEIN: It may have gotten misplaced.

17 THE COURT: Well, why don't you look for it while
18 we're going on to someone else.

19 MR. BURSTEIN: Okay. Thank you.

20 MR. ROBINSON: I believe next up on the list is
21 Defendant number eight, Jorge Cortez.

22 THE COURT: Correct.

23 MR. ROBINSON: Your Honor, Mr. Cortez's
24 participation in this was two-fold -- in this enterprise was
25 two-fold. First, he recruited another one of the

1 Defendants, Jorge Magana, as a straw purchaser for a piece
2 of property. He also prepared CPA letters, false
3 verifications of employment for a number of the straw
4 purchasers, and used that position. He was an employee at a
5 real estate business in San Diego that was used by the
6 members of the enterprise to conduct these false
7 transactions, and he prepared personally false loan
8 applications on behalf of several straw purchasers.

9 During the time period from September the 6th,
10 2006 to May 2nd, 2007, we can document deposits into his
11 account in the amount of \$59,132 in exchange for his
12 participation in the enterprise and its scheme.

13 As a result of that, the United States is
14 recommending, in accord with what Pretrial Services has
15 recommended, a \$150,000 property bond.

16 THE COURT: All right. Thank you.
17 Counsel?

18 MR. BURSTEIN: Yes, your Honor. Mr. Cortez has
19 been married to his wife, Maria, for 11 years. They have a
20 child together. They reside locally in Chula Vista. He has
21 a masters in education. I don't see really any risk of non-
22 appearance here. I would recommend a \$50,000 personal
23 appearance bond secured by two signatures. There's no
24 criminal history. I think \$50,000 would secure all future
25 court appearances.

1 THE COURT: All right. Thank you.

2 Court is going to require a \$150,000 personal
3 appearance bond secured by the co-signatures of two
4 financially responsible adults. Not requiring property in
5 this case. One of the sureties must be a family member.
6 Further conditions of the bond will be a travel restriction
7 to the Southern District. Defendant shall report for
8 supervision to Pretrial Services and actively seek or
9 maintain full time employment.

10 MR. BURSTEIN: Yes, your Honor.

11 THE COURT: Those will be the conditions for Jorge
12 Cortez.

13 MR. ROBINSON: Next is Defendant number 10, Lorena
14 Callu, and her participation in the scheme was as a member
15 of the office staff at one of the real estate offices that
16 was used by the enterprise. As such, she filled out the
17 false loan applications on behalf of the straw purchasers.
18 Moreover, Ms. Callu used her husband's legitimate company,
19 Callu Engineering, as a false employer for a number of the
20 straw purchasers. So, essentially, the straw purchaser
21 would come in, falsify their employment, falsify their
22 income, and one of the employers that was used in that
23 context was Ms. Callu's husband's legitimate place of
24 employment, Callu Engineering.

25 Accordingly, the Government would make the same

1 recommendation in accord with Pretrial Services, actually,
2 \$50,000 less than Pretrial Services, a \$150,000 property
3 bond.

4 THE COURT: All right. Thank you.

5 MR. BURSTEIN: Your Honor, I would note that Ms.
6 Callu has been married to her husband for 25 years. They
7 have three children together, and they also reside locally
8 in San Diego, actually in Chula Vista, your Honor. I think
9 that \$150,000 amount may be okay, but I would suggest that a
10 personal appearance bond secured by two signatures would be
11 sufficient to secure all future court appearances.

12 THE COURT: All right. Thank you.

13 Court is going to require a \$150,000 personal
14 appearance bond secured by the co-signatures of two
15 financially responsible adults, one of whom is a family
16 member. There will be a travel restriction to the Southern
17 District. Defendant shall actively seek and maintain or
18 maintain full time employment. Those will be the conditions
19 with regard to Ms. Callu.

20 I believe Mr. Anton Ewing is next.

21 MR. ROBINSON: Yes, your Honor. Mr. Ewing,
22 Defendant number 11, his role in the -- his role in the
23 enterprise was to prepare false CPA letters and letters of
24 employment verification. For example, for one of the straw
25 purchasers who was an unemployed 20-year-old student at the

1 time, he wrote a letter falsely verifying that individual's
2 employment. So his participation was limited to the
3 generation -- generating those particular letters and
4 documenting false employment for the straw purchasers, but
5 that was a critical piece of information for the lenders in
6 terms of determining whether or not the applicants for these
7 loans that exceeded the value of the home were, in fact,
8 legitimate applications. So he backstopped the straw
9 purchasers when they falsified the information to the
10 lending institutions.

11 I would also note that he is a certified public
12 accountant. He has his JD, but he's not licensed to
13 practice law in the State of California, and he has also
14 been deemed a vexatious litigant, having been party to 38
15 civil and domestic suits filed in San Diego Superior Court
16 between 2004 and 2009, and he's currently defending against
17 five harassment suits that have been filed against him.

18 THE COURT: All right. Thank you.

19 MR. BURSTEIN: Well, your Honor, Mr. Ewing also,
20 he resides here in Rancho Santa Fe with his wife. They have
21 one child who's two and a half years old. According to the
22 Government, he likes to come to court. So I don't think
23 that there is a real risk of non-appearance here. So I
24 would suggest that a \$50,000 personal appearance bond
25 secured by the signatures of two financially responsible

1 adults would be sufficient.

2 MR. ROBINSON: Your Honor, I failed to give the
3 Government's recommendation. We are in accord with Pretrial
4 Services, who is recommending \$200,000 secured by real
5 property. He did have a -- I believe it was in excess of
6 5,000 square foot home that was searched at the time of his
7 arrest in Rancho Santa Fe.

8 MR. BURSTEIN: That's just another reason for him
9 not to flee, your Honor.

10 MR. ROBINSON: He's not the owner of that home.
11 He was a renter.

12 THE COURT: The Court is going to require a
13 \$100,000 personal appearance bond secured by the signatures
14 of two financially responsible adults, one family member.
15 There will be a travel restriction to the Southern District.
16 Defendant shall actively seek and maintain full time
17 employment. Any new employment shall be approved by his
18 Pretrial Services officer.

19 MR. BURSTEIN: Your Honor, may I ask for -- just
20 as to the travel restriction, it's my understanding that he
21 has substantial family around the Bay Area. So if your
22 Honor would be willing, I don't know if the Government has a
23 problem with that, to extend the travel restrictions up
24 through I guess the Northern District or in the State of
25 California.

1 THE COURT: Any objection?

2 MR. ROBINSON: No, your Honor.

3 MS. GARZA: Naomi Garza with Pretrial Services.

4 The Defendant has an active restraining order. Just to note
5 that he should abide by the restraining order.

6 THE COURT: Thank you. Defendant shall abide by
7 the conditions of his restraining order, and I will expand
8 the travel condition to include the State of California.

9 MR. BURSTEIN: Thank you, your Honor.

10 THE COURT: You're welcome.

11 All right. Next, Dennis Tapia.

12 MR. ROBINSON: Yes, your Honor. With the
13 exception that Mr. Tapia is neither a CPA or an individual
14 with a JD degree, he had a role very similar to that of Mr.
15 Ewing that we just covered in terms of providing the false
16 CPA letters and verbal verifications of employment for some
17 of the straw purchasers in this scheme, and we would be
18 making the same recommendation with respect to Mr. Tapia.

19 THE COURT: All right.

20 MR. BURSTEIN: And, your Honor, we would concur
21 with Pretrial Service that a \$20,000 personal appearance
22 bond with two financially responsible adults would be
23 sufficient in this case. He's been married for 26 years.
24 He's got four children. He lives in Oceanside. We concur
25 with Pretrial Services' recommendation.

1 THE COURT: The Court is going to require a
2 \$50,000 personal appearance bond, secured by the co-
3 signatures of two financially responsible adults, one family
4 member. There will be a travel restriction to the Southern
5 District. Defendant shall actively seek and maintain full
6 time employment.

7 MR. BURSTEIN: Can we extend to the Central
8 District in this case, your Honor? There's substantial
9 family in the Los Angeles area is my understanding.

10 THE COURT: Any objection?

11 MR. ROBINSON: No, your Honor.

12 THE COURT: All right. Travel condition will
13 include the Central District of California. Those will be
14 the conditions for Mr. Tapia.

15 Now Ms. Desiree Holiday.

16 MR. ROBINSON: Your Honor, the United States moved
17 for detention as to Ms. Holiday.

18 THE COURT: I apologize. You're right.

19 MR. BURSTEIN: That was just flight, correct?

20 MR. ROBINSON: Yes.

21 THE COURT: So --

22 MR. ROBINSON: There are three remaining
23 Defendants, Jorge Magana --

24 THE COURT: Jorge Magana --

25 MR. ROBINSON: -- Nicoele Watson, and Daniel

1 Williams, and with the Court's permission and for purposes
2 of making this a little more brief, I'll address all three
3 at the same time. They had the same role in the conspiracy
4 itself.

5 THE COURT: All right.

6 MR. ROBINSON: All of those individuals acted as
7 straw purchasers for various pieces of property, providing
8 false employment information on their loan applications to
9 secure those multiple pieces of property within a short time
10 frame. All of the properties purchased by those three
11 Defendants have gone into foreclosure, resulting in a
12 significant loss to the bank.

13 With respect to Jorge Magana, Defendant number 22,
14 we've identified three properties that he purchased.
15 Nicoele Watson purchased five properties on behalf of the
16 enterprise, and Daniel Williams purchased three properties.
17 So three, five, and three for the last three Defendants.

18 As to the amount of money that they were paid for
19 their participation, we can show \$48,000 wire transfer to
20 Defendant number 22, Jorge Magana. So basically that's his
21 portion of the kickback amount that went to Bell
22 Construction. So he was paid for being the straw purchaser
23 on those pieces of property. The same would hold true for
24 Nicoele Watson, who we can show was paid at least \$106,000
25 in exchange for being the straw purchaser on her five pieces

1 of property, and Defendant number 24 has estimated himself
2 that he made in excess of \$100,000 in exchange for his role
3 in the enterprise purchasing those properties on behalf of
4 the enterprise.

5 As a result of those monetary amounts, we would
6 ask that each of those Defendants be released on a condition
7 that they provide a signature bond in the amount of
8 \$100,000.

9 THE COURT: All right. Thank you.
10 Counsel?

11 MR. BURSTEIN: Your Honor, unfortunately, I didn't
12 have the benefit of all the advanced information. So I'm
13 going to have to go one at a time.

14 THE COURT: That's fine.

15 MR. BURSTEIN: Okay.

16 THE COURT: Begin with Mr. Magana if you would,
17 please.

18 MR. BURSTEIN: Okay. Yes. As to Mr. Magana, your
19 Honor, my information indicates that he's been married for
20 the last 19 years to his wife Blanca. They have three
21 children together who are all United States citizens. He
22 resides in National City, California. It seems that the
23 Government's indicated that his role, to whatever extent he
24 was involved is even allegedly minor. So I would suggest in
25 this case that a \$50,000 personal appearance bond would be

1 sufficient.

2 MR. ROBINSON: If I said the word minor, I
3 misspoke. It was not minor. He was an important part of
4 this whole enterprise. He clearly did not represent the
5 full scope of the enterprise, but his participation was
6 critical. So I didn't mean to characterize him as minor.

7 THE COURT: All right.

8 And, Mr. Robinson, you said he made at least
9 \$100,000?

10 MR. ROBINSON: No, your Honor. We can show a
11 \$48,000 wire transfer into his account. And, again, the
12 monetary amounts that I'm addressing are only those that we
13 can prove via wire transfer or a check going in and out of
14 somebody's account and is not included within that amount
15 the cash payments that were made.

16 THE COURT: All right. The Court's going to
17 require a \$50,000 personal appearance bond secured by the
18 co-signatures of two financially responsible adults, one
19 family member. There will be a travel restriction to the
20 Southern District. Defendant shall actively seek and
21 maintain full time employment. Those will be the conditions
22 for Mr. Magana.

23 Mr. Robinson?

24 MR. ROBINSON: Yes, your Honor. With respect to
25 Nicoele Watson, just drawing the Court's attention to my

1 earlier proffer, she benefitted in the amount of \$106,000,
2 and that's the amount that we can show going into her
3 account for her purchase of five pieces of property, the
4 fraudulent purchase of five pieces of property, all of which
5 have been foreclosed.

6 THE COURT: All right. Thank you.

7 MR. BURSTEIN: Yes, your Honor. Ms. Watson is a
8 United States citizen. She resides in San Diego. She has
9 one child who's 13 years old. I think Pretrial Services
10 recommends a personal appearance bond in this case of
11 \$50,000 secured by two financially responsible adults'
12 signatures, and we would concur with that.

13 THE COURT: All right. Thank you.

14 The Court is going to require a \$50,000 personal
15 appearance bond secured by the co-signatures of two
16 financially responsible adults, one of whom shall be a
17 family member. There will be a travel restriction to the
18 Southern and Central Districts of California. Defendant
19 shall actively seek and maintain full time employment.
20 Those will be the conditions for Nicoele Watson.

21 MR. ROBINSON: The final Defendant, your Honor,
22 Daniel Williams, we would be making the same recommendations
23 that the Court just set for Ms. Watson. He was a straw
24 purchaser on three pieces of property, and given the nature
25 of his current employment, his housing conditions at the MCC

1 are not optimal.

2 THE COURT: All right. Thank you.

3 Counsel?

4 MR. BURSTEIN: We would concur that a \$50,000
5 personal appearance bond would be sufficient. We would note
6 that all of his connections are really to San Diego here,
7 your Honor.

8 THE COURT: The Court is going to require a
9 \$50,000 personal appearance bond secured by the co-
10 signatures of two financially responsible adults, one being
11 a family member. There will be a travel restriction to the
12 Southern District. The Court is going to require that Mr.
13 Williams surrender all of his firearms.

14 Let me ask our Pretrial Services officer where you
15 want those firearms to go?

16 MS. GARZA: Your Honor, we would request that the
17 firearms be surrendered to a gun dealer.

18 THE COURT: A gun dealer?

19 MS. GARZA: Your Honor, usually we have -- so that
20 they make a transaction (indiscernible) to either sell the
21 gun or transfer it to a dealer or transfer it to a different
22 owner so there's no (indiscernible) professional or
23 ownership of the weapon.

24 THE COURT: All right. Well, the condition is
25 going to be that the Defendant surrender his firearms in

1 accordance with conditions set by Pretrial Services for the
2 surrender of those weapons.

3 MS. GARZA: That will be fine, your Honor.

4 THE COURT: All right. Those will be the
5 conditions as to Mr. Daniel Williams.

6 MR. ROBINSON: Your Honor, if we can go back to
7 Ms. Jaime, who we passed over.

8 THE COURT: Yes.

9 MR. BURSTEIN: I still don't have a sheet,
10 unfortunately, your Honor. I looked, and I don't see it.

11 MS. GARZA: We can provide an original copy, your
12 Honor.

13 THE COURT: All right. Thank you.

14 MR. ROBINSON: Your Honor, Ms. Jaime was an
15 employee at one of the real estate businesses that was used
16 by the enterprise to fraudulently purchase the properties at
17 issue in this case. She processed false loan applications
18 and was also someone who verified falsely employment for the
19 straw purchasers. She was heavily involved in the
20 conspiracy. However, I mentioned before that she has
21 special circumstances. I believe she's seven months
22 pregnant at this point, and she does have significant ties
23 to the Southern District of California.

24 We would, therefore, be recommending a \$50,000
25 signature bond.

1 THE COURT: All right. Thank you.

2 Do you have a copy of the Pretrial Services
3 Report?

4 MR. ROBINSON: Yes.

5 THE COURT: Thank you.

6 MR. BURSTEIN: We concur with the Government, your
7 Honor.

8 THE COURT: All right.

9 Court will require a \$50,000 personal appearance
10 bond secured by the co-signatures of two financially
11 responsible adults, one being a family member. There will
12 be a travel restriction to the Southern District. Defendant
13 shall -- well, she shall seek employment if she's physically
14 capable. Those will be the conditions of the bond with
15 regard to Ms. Jaime.

16 All right. The next court appearance for the
17 remaining individuals will be for detention hearing next
18 Wednesday morning at 9:00 o'clock.

19 MR. BURSTEIN: Thank you, your Honor.

20 THE COURT: Thank you. Thank you, ladies and
21 gentlemen.

22 (Proceedings concluded.)
23
24
25

1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/Jordan Keilty 5/11/09
6 Transcriber Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8 /s/L.L. Francisco
9 L.L. Francisco, President
Echo Reporting, Inc.

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